

7/21/2022 Wayne Mehlman, ACLI - From Susan's email of July 13:

I noticed that your reply did not include responses to questions we asked in key person replacement draft about the definition of business income and the need to keep the definition of cost of sales and services and how this affects the definition of prior business income.

ACLI's response:

We agree with the PSC that the retention of the definition of "Business Income" will also require the retention of the definition of "Cost of Sales and Service" as "Cost of Sales and Service" is used in the definition of "Business Income" (i.e., "Business Income means the gross earned income of the Business less the Cost of Sales and Service").

From Susan's email of July 18:

The PSC had additional questions about the ACLI responses on the Buy-Sell draft. The PSC commented that language simply needs to be explicit that it is for the carrier to verify continued disability during the elimination period.

Required Provisions, (10) Notice of Claim, Requirements for notice of continuing disability. The ACLI indicated that this language is needed in connection with the need to ensure continuing disability during the elimination, the current language seems to discuss continuing disability after claim payments have already begun. The PSC questions whether the current provision sufficiently addresses the issue ACLI intends this language to cover.

ACLI's response:

We have revised the first sentence of the second paragraph of the "Notice of Claim" provision to the Buy-Sell Standards from: "In a policy providing a monthly benefit which may be paid for at least two years, the provision may state that the *Owner(s)* shall, at least once in every six (6) months after having given notice of claim, give the company notice of continuance of disability, except in the event of legal incapacity of the *Owner(s)*." to : "If the policy has an elimination period of twelve (12) months, or more, the provision may state that the *Owner(s)* shall, at least once in every six (6) months after having given notice of claim, give the company notice of continuance of disability, except in the event of legal incapacity of the *Owner(s)*."

Permissible Limitations (6) Objective medical means. The ACLI response did not provide the example. The PSC would like a better explanation and an example of a disability that might not be verifiable by objective medical means.

ACLI's response:

Permissible Limitations or Exclusions: Disabilities not Verifiable by Objective Medical Means. Examples of disabilities caused by an injury or sickness not verifiable by Objective Medical Means include fibromyalgia, chronic fatigue syndrome, myofascial pain syndrome, connective

tissue disorders of the neck, shoulder and back such as sprains or strains of the muscles of the neck, shoulder and back. Objective Medical Means is defined as “medical evidence consisting of signs, symptoms, and laboratory findings”. This includes x-rays, CT scans, MRIs, ultrasounds, lab work (blood, urine, or other collected samples from the insured) and other established and medically accepted clinical and laboratory standardized tests. During the disability claims evaluation process medical records are obtained from medical providers. Usually, a medical record will contain a section wherein the medical provider records the insured patient’s stated symptoms or complaints. A record of the medical provider’s observations upon examination will be found in another section of the medical record. Finally, another section of the medical record will contain the results of standardized clinical testing ordered by the medical provider such as lab work (blood, urine and/or other samples collected from the patient), x-rays, CT scans, MRIs, or ultrasounds. In this way, the Objective Medical Means or medical evidence consists of signs, symptoms, and laboratory or clinical findings as opposed to the insured’s statements alone.

Permissible Limitations (7) Disabled Insured residing outside the United States. The PSC suggests language needs to be modified for the Buy-sell draft to address the elimination period rather than the suspension of benefits as well as the need for the insured to return for an examination during the elimination period.

ACLI’s response:

We have revised the outside the United States provision to the Buy-Sell Standards as follows to address the longer elimination periods found in disability buy-out policies:

**“(7) Insured Residing Outside the United States, Territories or Possessions of the United States or Canada, as Applicable (the “Specified Area).** While an *Insured* is residing outside the Specified Area and claiming *Disability*, including during the *Elimination Period*, the *Insured* may be required to return to the United States or Canada as often as reasonably required by the company at the *Insured’s* expense, for an in-person examination to substantiate the claim for Disability.

**In addition to the questions in the July 13 email about the definition of business income, the PSC asked about the need for a definition of Benefit Payment Methods in the Key Person Replacement draft.**

The ACLI indicated that the Key Person definition was necessary for "clarification". The definition in the Buy/Sell standard is much simpler. We were looking to understand why clarification is needed in a Key Person policy but not in a Buy/Sell contract.

ACLI’s response:

Both the draft Buy-Sell and Key Person Standards contain the same definition of "Benefit Payment Methods", and both sets of regulations indicate the Benefit Payment Method is a required provision. As such, the same level of clarity appears to exist in both sets of standards. Additional clarification from the PSC on their comments would be much appreciated.

Specifically, on page 7 of the draft Buy-Sell Standards under the “**B. DEFINITIONS AND CONCEPTS**” section of the standards, the “Benefit Payment Methods is defined as follows:

- (6) “**Benefit Payment Methods**” means the methods of benefit payments are:
- (a) Monthly payment means the maximum monthly amount payable for any Total Disability after satisfying the Elimination Period.
  - (b) Lump sum payment means the maximum lump sum amount payable for any Total Disability after satisfying the Elimination Period.
  - (c) Combination payment means a combination of the monthly payment and lump payment methods.

This is consistent with our understanding of the intended purpose of that section of the standards (i.e., to specifically define terms contained within a policy).

On page 11 of the draft Buy-Sell Standards under the “**C. REQUIRED PROVISIONS**” section of the standards, the “Benefit Payment Methods” is referenced generally as follows as one of the provisions that must be contained within the policy:

“Each policy shall contain all of the provisions as set forth below. The company may, at its option, substitute for one or more of the provisions below corresponding provisions of different wording approved by the Interstate Insurance Product Regulation Commission as not less favorable in any respect to the Insured and/or Owner(s).

(1) **Benefit Payment Methods.** The methods and amounts of benefit payments will be displayed on the specification page. Any amount paid will be equal to or less than the actual *Purchase Price* or the policies benefit amount but not to exceed the *Aggregate Benefit Amount*

The intended purpose of each section differs. While the “**B. DEFINITIONS AND CONCEPTS**” section of the Buy-Sell Standards specifically defines the “Benefit Payment Methods” provision, the “**C. REQUIRED PROVISIONS**” section of the standards makes a general reference to “Benefit Payment Methods” provision as one of the required policy provisions and generally summarizes the definition without the specificity found in the definitions section.

The above analysis also applies to the draft Key Person Standards with the “Benefit Payment Methods” specifically defined on page 7 of the Key Person Standards under the “**B. DEFINITIONS AND CONCEPTS**” section of the standards and a general reference to “Benefit Payment Methods” on page 14 of the Key Person Standards as one of the required policy provisions under the “**C. REQUIRED PROVISIONS**” section of the Key Person Standards.